

1 THE W LAW FIRM P.L.L.C.

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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF COCHISE**

11 STATE OF ARIZONA, )

12 Plaintiff, )

13 vs. )

14 **FAUSTO NAVARRO,** )

15 Defendant. )

**No. CR201800212**

**MOTION FOR REMAND TO  
THE GRAND JURY FOR  
REDETERMINATION OF  
PROBABLE CAUSE**

Hon. John F. Kelliher Jr.  
Div. II

16  
17 The Defendant, FAUSTO NAVARRO, by and through undersigned counsel,  
18 respectfully moves this court to remand this matter to the Cochise County Grand Jury for  
19 a redetermination of probable cause.

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1 This motion is based upon the 5th, 6th and 14th Amendments to the United States  
2 Constitution, Article 2 Sections 4, 10, 24 and 30 of the Arizona Constitution, Rule 12 et  
3 seq. of the Arizona Rules of Criminal Procedure and the attached memorandum of points  
4 and authorities which is incorporated herein by this reference.  
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6 RESPECTFULLY SUBMITTED this 6 day of April, 2018.  
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9 THE W LAW FIRM P.L.L.C.

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13 David T. Wilkinson, Esq.  
14 Attorney for Defendant  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. FACTS

On March 1, 2018, the Cochise County Grand Jury convened for a probable cause determination in this case as well as Co-Defendant Hernan Navarro's case: CR201800213. Michael Powell, Cochise County Deputy County Attorney, presented the two cases simultaneously to the Grand Jury with Detective Molly Ingram with the Bisbee Police Department as the sole witness.

The Grand Jury found a true bill by a vote of 16 to zero on all seven charges:

1. Sexual Assault (Hernan);
2. Sexual Abuse (Hernan);
3. Sexual Conduct with a Minor (Hernan);
4. Kidnapping (Hernan);
5. Sexual Assault (Fausto);
6. Sexual Assault with a Minor (Fausto) and
7. Kidnapping (Fausto).

Detective Ingram described to the grand jury Hernan Navarro's alleged acts, with the alleged victim being M.A. This alleged act took place in a house, in a bedroom; Fausto Navarro was not involved in any way with these alleged acts (counts 1-4 listed above). Next, Detective Ingram described to the grand jury Fausto Navarro's alleged acts, with the alleged victim being S.D. This alleged act took place in a truck, outside. Hernan Navarro was not involved in any way with these alleged acts (counts 5-7 listed above).

The grand jury transcript was filed with the Clerk of the Court March 23, 2018. Undersigned counsel received the transcript from the grand jury proceedings on March 29, 2018. This Motion to Remand followed.

## II. LAW

Rule 12.9 (a) of the Arizona Rules of Criminal Procedure provides:

Grounds. The grand jury proceedings may be challenged only by motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right, or that an insufficient number of qualified grand jurors concurred in the finding of the indictment.

An accused person is entitled to due process in the grand jury proceedings. *Crimmins v. Superior Court*, 137 Ariz. 39, 668 P.2d 882 (1983); *State v. Emery*, 131 Ariz. 493, 642 P.2d 838 (1982). The due process rights of the accused are protected by the Fifth and Fourteenth Amendments to the United States Constitution and by Article 2 Sections 4, 24, and 30 of the Arizona Constitution. Due process requires that a prosecutor read the applicable statutes to the Grand Jury, provide copies of the statutes for use during deliberation, and ask the Grand Jury whether they would like any of the statutes reread or clarified. See *O'Meara v. Gottsfield*, 174 Ariz. 576, 578, 851 P.2d 1375, 1377 (1993).

Further, "due process . . . requires the use of an unbiased grand jury and a fair and impartial presentation of the evidence." *O'Meara v. Gottsfield*, 174 Ariz. 576, 577, 851 P.2d 1375, 1376 (1993)(*En Banc* citing *Crimmins v. Superior Court*, 137 Ariz. at 41 (1983)); *State v. Emery*, 131 Ariz. at 506. The prosecutor's duty to present evidence to the grand jury in a fair and unbiased manner is very important because of the ex parte nature of the hearing. *O'Meara v. Superior Court*, 173 Ariz. 355, 356, 842 P.2d 1368, 1369 (App. 1992).

## III. ARGUMENT

### A. The State Violated Mr. Navarro's Due Process Rights to a Fair and Impartial Presentation of the Evidence by Presenting Both Fausto and Hernan's Cases Simultaneously to the Grand Jury.

Here, the State *chose* to present Fausto Navarro and Hernan Navarro's cases together to the grand jury. This choice to present two cases as one precluded each defendant from having a *fair and unbiased* presentation to the jury. See *Id.* Joinder as co-defendant's in a

1 case is substantially different than joinder in grand jury proceedings because of the *ex*  
2 *parte* nature of the hearing. See *Id.*

3 The facts of this case, as presented to the grand jury, were two distinct fact patterns.  
4 There are two different alleged victims, with each co-defendant having a different victim.  
5 The alleged sexual acts took place in different places, one in a bedroom in the house and  
6 the other in a truck outside the house. Even the alleged sexual acts are different in nature,  
7 with one being penial/vaginal penetration and the other being finger/vaginal penetration.

8 The State presented the facts in this case by having Detective Ingram describe  
9 Hernan's case to the grand jury first, and then describing Fausto's case to the grand jury  
10 immediately afterwards. This is improper. By presenting each defendant's case together,  
11 instead of individually for two different grand jury proceedings, the grand jury was  
12 unable to individually give each defendant a fair and impartial decision-making  
13 opportunity for a probable cause determination. See *O'Meara*, 174 Ariz. at 577; *Emery*,  
14 131 Ariz. at 506.

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1 **IV. CONCLUSION**

2 Grand jury proceedings are a primary security to the innocent against hasty,  
3 malicious and oppressive persecution. Because of the importance of this initial step in  
4 the legal process, nothing can be overlooked when dealing with a defendant's Due  
5 Process Rights. Mr. Navarro's Due Process Rights were violated multiple times in his  
6 grand jury proceedings as discussed above, and as such a remand for redetermination of  
7 probable cause is necessary to ensure no further Constitutional violations occur.  
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10 RESPECTFULLY SUBMITTED this 6 day of April, 2018.

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12 THE W LAW FIRM P.L.L.C.

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14   
15 David T. Wilkison, Esq.  
16 Attorney for Defendant

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18 A Copy of the foregoing  
19 Sent/Emailed on April 6, 2018  
20 to the following:

21 The Honorable John F. Kelliher Jr.  
22 Cochise County Superior Court  
23 100 Quality Hill Rd.  
24 Bisbee, Arizona 85603

25 Michael Powell  
26 Deputy County Attorney  
27 150 Quality Hill Rd.  
28 Bisbee, Arizona 85603

By:

  
David Wilkison, Esq.